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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA, FRESNO DIVISION**

9 NANCY JUNE NOVAK,

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11 Plaintiff,

12 vs.

13 CITY OF MERCED, A MUNICIPAL
CORPORATION, MERCED POLICE
14 OFFICER RASMUSSEN (#161),
INDIVIDUALLY AND IN HIS
15 OFFICIAL CAPACITY AS A POLICE
OFFICER FOR THE CITY OF MERCED,
16 SGT. STRUBLE (ID #UNKNOWN),
INDIVIDUALLY AND IN HIS
17 OFFICIAL CAPACITY AS A POLICE
SERGEANT FOR THE CITY OF
18 MERCED, OFFICER CHAVEZ (#156),
INDIVIDUALLY AND IN HIS
19 OFFICIAL CAPACITY AS A POLICY
OFFICER FOR THE CITY OF MERCED,
20 THE MENTOR NETWORK, LOYD'S
LIBERTY HOMES, INC., A
21 MASSATUCHETS CORPORATION
DOING BUSINESS IN CALIFORNIA,
22 CHRISTINA TRIGG, AN INDIVIDUAL,
23 JOELLA BREWER, AN INDIVIDUAL,
24 CARE MERIDIAN CORPORATION,
25 AND DOES 1-50, inclusive,

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27
28 Defendants.

Case No.: 1:13-CV-01402-BAM

Action Filed: Aug. 30, 2013

**STIPULATED AGREEMENT TO
EXTEND SCHEDULING ORDER;
SUMMARY JUDGMENT MOTION
OF DEFENDANTS, MENTOR
NETWORK, LOYD'S LIBERTY
HOMES, TRIGG AND BREWER; AND
ORDER THEREON**

1 Plaintiff, NANCY JUNE NOVAK, by and through her attorney of record,
 2 Timothy V. Magill, Esq. of Magill Law Offices in Fresno, California, and Defendants,
 3 THE MENTOR NETWORK, LOYD’S LIBERTY HOMES, CHRISTINA TRIGG, and
 4 JOELLA BREWER, by and through their attorney for record, Douglas C. Smith, Esq. of
 5 Riverside, California, and Defendants, MERCED POLICE DEPARTMENT, OFFICER
 6 RASMUSSEN, SGT. STRUBLE, and OFFICER CHAVEZ, by and through their
 7 attorney of record, Dale Long Allen, Jr., Esq. of San Francisco, California, hereby
 8 stipulate and agree to continue the current Motion for Summary Judgment, filed by
 9 Defendants Mentor Network, et al., and extend the Briefing Schedule filed May 12, 2015,
 10 as listed below:

11 Continued Motion for Summary Judgment –with applicable deadlines, March 10, 2016.

	<i>Old</i>	<i>New</i>
13 Non-Expert Discovery Cut-off	September 29, 2015	March 31, 2016
14 Expert Discovery Cut-off	October 16, 2015	April 15, 2016
15 Pre-trial/MSJ Filing Deadline	November 2, 2015	May 6, 2016
16 Pre-trial Conference	January 27, 2016	August 10, 2016 at 17 8:30 a.m.
18 Jury Trial	March 29, 2016	September 12, 2016 at 19 8:30 a.m.

20 The reasons why counsel are stipulating to an extension of said Scheduling Order
 21 and also Defendants’ Summary Judgment Motion, are:

22 1. Medical

23 On Sunday, November 8, 2015, Mr. Magill, attorney for Plaintiff in this matter,
 24 suffered a heart attack. Mr. Magill underwent surgery and had two stents inserted into
 25 the arteries leading to his heart. Mr. Magill’s surgeon told him that he absolutely could
 26 not work for over a week, and prescribed him several medications.

27 Counsel for Defendants were made aware of the medical condition of Mr. Magill
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1 on Monday, November 9, 2015.

2 Initially, it was requested that a short continuance / extension of time to respond to
3 the Motion for Summary Judgment be agreed to. Based on personal experience of
4 Defendants' counsel, it was agreed that more time than a week or two would be more
5 probable for Mr. Magill to continue representation of Plaintiff and respond to the MSJ.

6 During the week of November 16, 2015 Mr. Magill was to have prepared the
7 Stipulation / Agreement and circulate the document for signatures. However, due to
8 medication issues and other issues related to the heart attack and aftermath of that event,
9 Mr. Magill was not capable of preparing the Stipulation / Agreement.

10 2. Discovery

11 a. Depositions

12 Plaintiff has been trying to depose Officer Rasmussen, but the Officer has had
13 medical issues of his own, and has been off-work and on medication that has made it
14 impossible for him to be deposed. Officer Rasmussen suffered a gunshot wound to his
15 hand. Until recently, it has been unknown as to when Officer Rasmussen may be
16 available for deposition. Plaintiff had also set the deposition for the doctor of Loyd's
17 Home, et al., and others for September 28, 2015. This was Todd Marion, Maira Carranza
18 and Dr. Charles Cano. The depositions were to be taken in Fresno and in Merced, since
19 the parties would go to Dr. Cano's office in Merced. Those depositions were unable to
20 go forward, as the parties were unable to confirm the date. Additionally, prior to that
21 date, on or about September 22, 2015, depositions were set of various witnesses,
22 including one that Plaintiff wishes to take, namely Joanne Bolton. There are additional
23 persons who have been recently disclosed by the Mentor Network Defendants, namely
24 Kali Murry and Gwen Hewitt for Loyd's Liberty Homes whose deposition needs to be
25 taken. The deposition of Plaintiff's experts, Jack Smith, Rick Sarkisian and Aaron
26 Pankratz were previously scheduled and cancelled in the month of October 2015. The
27 deposition of Dr. Manual, who is the Director of the Maria Green facility where Plaintiff
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1 was employed, will still need to be scheduled, as well as the rescheduling of Rita
2 Townsend and others who treated Ms. Novak - Dr. Djevalikian, Barbara T. Mooreland,
3 Deborah Ohanisian, Matthew D. House, Dwight Severt, Christine George, Tony Reid,
4 and Karen Sogovia – also, Gary Comer, which were all set for October 7-9, 2015. These
5 all conflicted with a previously scheduled trial entitled, *Jordan v. State of California, et*
6 *al.*, venued in the San Luis Obispo County Courthouse. This was a four (4)-week
7 scheduled trial that commenced on October 13, 2015. Additionally, Plaintiff’s counsel
8 had to be in San Luis Obispo during the week of September 28, 2015 and October 5,
9 2015 to prepare for the case.

10 b. Written Discovery

11 There are discovery responses and discovery requests that have not been
12 completed as of this date.

13 Mr. Magill has been in a four (4)-week trial in San Luis Obispo. Between trial
14 preparation and last minute arguments, travel, and all of the issues of an out-of-town trial,
15 Mr. Magill has been intimately involved with that particular case for over a two (2)-
16 month period. The trial ended and a verdict came in the day after Mr. Magill’s heart
17 attack. He was unable to be at the San Luis Obispo County Courthouse for the verdict, as
18 he was in the hospital.

19 3. Health Issues

20 Mr. Magill is trying to continue to improve his health and well-being. He is
21 submitting to the orders of his physician as far as physical movement and other dictates.
22 He is still weak and tires easily. Mr. Magill has not been able to work in his office for
23 more than two (2) to three (3) days a week for no more than three (3) to four (4) hours.
24 This includes phone calls, meeting with clients, potential clients, and / or working on
25 pleadings or other documents. He has not regained his strength and / or vitality as of yet.

26 Presently, Mr. Magill has commenced cardiac physical therapy beginning the
27 week of December 7, 2015. It is unknown at this time how long the cardiac physical
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1 therapy will last at the hospital.

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4 4. Other Continuance / Extensions

5 All parties agree that this matter should not be continued or the Scheduling Order
6 be extended again, without good cause. In that vein, and in an abundance of caution,
7 counsel have agreed to the proposed schedule above to avoid another continuance /
8 extension of matters, if possible.

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10 DATED: December 11, 2015.

MAGILL LAW OFFICES

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12 By: /s/ Timothy V. Magill
13 Timothy V. Magill, Esq.
14 Attorney for Plaintiff,
NANCY JUNE NOVAK

15 DATED: December 11, 2015.

SMITH LAW OFFICES

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17 By: /s/ Douglas C. Smith
18 Douglas Charles Smith, Esq.
19 Attorney for Defendants,
20 THE MENTOR NETWORK,
21 LOYD'S LIBERTY HOMES,
22 CHRISTINA TRIGG
and JOELLA BREWER

23 DATED: December 11, 2015.

ALLEN, GLAESSNER, HAZELWOOD,
24 WERTH

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26 By: /s/ Dale L. Allen, Jr.
27 Dale Long Allen, Jr., Esq.
28 Attorney for Defendants,
MERCED POLICE DEPARTMENT,

1 OFFICER RASMUSSEN, SGT.
2 STRUBLE, and OFFICER CHAVEZ

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4 **ORDER**

5 Having considered the parties' stipulation, the Court finds good cause for partial
6 modification of the scheduling conference order and shall grant the requested relief as noted
7 below. The request to extend the deadlines for Non-Expert Discovery Cut-off and Expert Cut-
8 off is DENIED for lack of good cause. Failure to timely set and complete discovery before the
9 relevant deadline is not good cause. The Court will accommodate Mr. Magill's health issues, but
10 those issues began after the non-expert and expert cut-off dates expired. Accordingly, IT IS
11 HEREBY ORDERED that the following schedule shall be adopted:

	<u>Original Deadline</u>	<u>New Deadline</u>
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13		
14	Non-Expert Discovery Cut-off for the deposition of	
15	Rasmussen ONLY	March 31, 2016
16	Pre-trial/MSJ Filing Deadline	November 2, 2015
17	Pre-trial Conference	May 6, 2016
18		August 1, 2016 at
19		8:30 a.m.
20	Jury Trial	March 29, 2016
21		September 13, 2016
22		at 8:30 a.m.

21 The motion for summary judgment currently pending (Doc. 47) is DENIED
22 without prejudice based upon the continuance. In light of the schedule and Mr. Magill's
23 health, should the parties desire the Court to set a settlement conference, the parties
24 should contact Courtroom Deputy Harriet Herman at 559-499-5788.
25 IT IS SO ORDERED.

26 Dated: December 15, 2015

27 /s/ Barbara A. McAuliffe
28 UNITED STATES MAGISTRATE JUDGE

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